IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1911 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL MAGANBHAI MULABHAI

Versus

COLLECTOR BANASKANTHA

Appearance:

MS KUSUM M SHAH for Petitioner No. 1
MR BY MANKAD, AGP for the respondent no. 1 & 7.
RULE SERVED BY DS for Respondents No. 1 to 6

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/02/2002

ORAL JUDGEMENT

1. This petition has been filed for quashing and setting aside the impugned order Annexure-G passed by the State Government rejecting the revision application filed by the petitioner and confirming the order passed by the

Collector, Banaskantha in Appeal and the order passed by the competent authority - Dy. Collector.

2. The petitioner is an owner of land bearing blocks no. 193 and 191 adjoining to blocks No. 185, 186 and 187 owned by the respondents no. 2 to 6. The respondent no. 6 wanted to sell block no. 185 as it was separate from other lands in order to pay the amount for purchase of other land. The said land being adjoining to the land of the petitioner, the petitioner agreed to purchase the same for Rs.20,000/- and paid Rs.5000/- on 20-4-1975, Rs.4000/- on 7-5-1980 and remaining amount of Rs.11,000/on 21-5-1980. The registered sale deed was executed on the same day i.e. 21-5-1980 and the petitioner was put into possession of that land. Since then the petitioner is in possession of that the said land and is cultivating the same. The respondents no. 2 and 3 being owners of block no. 186 adjoining to block no. 193 of the petitioner, that land was sold to the petitioner for Rs.2000/- by a registered sale deed on 28-6-1978 and since then the petitioner is in possession and is cultivating that land. Thereafter, the respondents no. 2 and 3 also sold block No.186 to the petitioner for development of their other land. The respondent no. 5 also sold his land - block no. 187 to the petitioner for Rs.2000/- by a registered sale deed on 14-8-1978 and the possession thereof was handed over to the petitioner. Similarly, the respondent no. 5 also sold his land block no. 187 to the petitioner by registered sale deed.

3. The petitioner after purchasing the aforesaid lands i.e. block No. 185, 186 and 187 has invested huge amount for making the land cultivable. But the petitioner's name was not entered into revenue record for the land purchased by him from the respondents no. 2 to 6. Thereafter, the petitioner made an application on 21-2-1983 to the Mamlatdar. The Dy. Collector vide his order dated 27-8-1984 held that the possession of the land in question was handed over to the petitioner and there was no breach of fragmentation or consolidation but directed for forfeiture of the petitioner's land to the State Government for breach of conditions of new tenure land by sale without previous permission of the State Government.

4. The petitioner preferred an appeal before the Collector, Banaskantha against the order of the Dy. Collector. The Collector, Banaskantha remanded the matter back to the Dy. Collector and directed him to decide the nature of the land being "Pasayta Chakaviyat"

land of new and impartible tenure or not after issuing a fresh notice to the parties concerned. After issuing the notice to all the parties, the Dy. Collector vide his order dated 13-6-1985 held that the land of Blocks No. 185, 186 and 187 was initially "pasayta chakaviyat" land which on payment of 6 times the assessment, by the order dated 24-10-1961 was regranted to its occupants i.e. the respondents no. 2 to 6. It was further held that the sale of aforesaid land without prior permission from the competent authority was not valid and sales being of date prior to 13-7-1983, could not be regularised under the Govt. Resolutions dated 11-6-1968 and 5-8-1968.

5. The petitioner filed the appeal against the order of the Dy. Collector which was dismissed by the Collector vide order dated 28-10-1985 holding that as per the prevailing Govt. Resolutions there was no provisions for regularisation of the sale of "pasayta" land and as the request for regularisation was not made at the relevant time it could not now be regularised. Against that order, the petitioner filed revision application before the Secretary, Revenue Department, Gujarat State who rejected the petitioner's revision application and confirmed the orders passed by the Collector as well as the Dy. Collector, vide his order dated 23-10-1987. Hence, the present petition has been filed for quashing and setting aside the impugned orders.

6. The affidavit-in-reply has been filed on behalf of the respondent no. 1 by the Resident Deputy Collector, Banaskantha wherein it is stated that the lands in question are of the type of new and impartible nature and before transferring or selling these types of lands, the owner will have to take prior permission of the Collector. But in the present case no prior permission was taken from the Collector before transferring the land to the petitioner. As there was no provision for regularisation in the code for selling of new tenure lands, without prior permission, the authority has rightly ordered to forfeit the lands with the Government. It is also stated that the the petitioner has demanded for regularisation of his land as per the Govt. Resolutions dated 11-6-1968 and 5-8-1968 and till the order of forfeiture of the land by the Dy. Collector on 27-8-1984, the petitioner had not applied for regularisation of the land and in absence of any such application of the petitioner, lands of the petitioner could not be regularised and the authority concerned had taken action in accordance with the law prevailing at that time. It is also mentioned that one circular dated 14-3-1996/11-3-1996 was shown to this Court and prayed

that the land should be regularised according to the Circular dated 14-3-1996/11-3-1996. The authorities concerned have taken decision in accordance with law and the said circulars which were prevailing at the relevant time. Hence, the order passed by both authorities are fully justified and no interference is required by this Court. The petitioner has no right to get the land regularised as per the Circular dated 14-3-1996/11-3-1996 because the authority has taken the action and gave decision as per the prevailing resolutions at the relevant time. Learned counsel for the petitioner also relied on the decisions of this Court rendered in Special Civil Application NO. 789/86 dated 20-6-1996 and Special Civil Application No. 11142/98 dated 21-1-1999. However, the decision rendered in Spl. C.A. No. 789/86 is not applicable to the present case as in the present case the petitioner has not applied for regularisation of his land as per the Govt. Resolution dated 11-6-1968 and 5-8-1968. If the petitioner has applied for regularisation of his land as per the aforesaid Govt. Resolutions then the matter of the petitioner could have been decided as per the decision rendered in Spl. C. A. No. 789/96 dated 21-1-1996. So far as another decision rendered in Spl. C.A. No. 11142/98 dated 21-1-1998 is concerned, the same is also not applicable in the present case. In that case, the Secretary had passed his order dated 13-7-1998 and he had not considered the resolution dated 14-3-1996/11-3-1996 and this Court remanded the matter back to the Secretary for reconsideration of the matter in light of the resolution dated 14-3-1996/11-3-1996. But in the present case, the Secretary has passed the order on 23-12-1987 and hence this matter cannot be remanded back to the Secretary as per the aforesaid order passed by this Court as the Govt. Resolution dated 14-3-1996/11-3-1996 was not at all in existence. The petitioner has not at all applied to the authority concerned for regularisation of his land and hence the petitioner cannot take shelter of the Govt. Resolutions dated 11-6-1968 and 5-8-1968 as the transfer of land without prior permission of the State Government is breach of the conditions resulting in forfeiture of the land is proper and justified.

7. The contention of the learned counsel for the petitioner is that the land of impartible and new tenure can be regularised even though the land of "Inam" has been transferred without prior permission of the competent authority.

8. This Court in the case of Chhotabhai Dahyabhai Thakore Vs. State of Gujarat and others, reported in AIR

1997 Gujarat 166,, wherein it has been held as under :

"The petitioner is a bona fide purchaser and the order of forfeiture of the land on the ground that it is a new tenure land and as such without prior approval of the authority concerned it could not have been transferred to the petitioner is highly arbitrary and unjust and as such without prior approval of the authority concerned it could not have been transferred to the petitioner is highly arbitrary and unjust."

Learned counsel for the respondents does not dispute that the new tenure lands are also alienable and partible, though with the prior approval of the competent authority. The learned counsel for the respondents, when asked by the Court, very fairly submitted that transfer is permissible on payment of certain premium. None of the counsel for the parties is able to give out what actual amount has to be paid in the present case by way of premium."

9. Learned counsel for the petitioner also relied on the decision of this Court render on 26-6-1996 in Spl. C. A. No. 789/86, wherein it is observed that the respondents have not considered the Government Resolutions dated 11-6-1968 and 5-8-1968, which provide regularisation of transfer of new tenure land in cases of service "Inam" land in the State of Gujarat and the orders were quashed and set aside and the matter was remanded back to the respondent no. 1 State Government for reconsideration in light of the aforesaid Government Resolutions for regularisation of the petitioner's land.

10. Learned counsel for the petitioner has invited the attention of this Court to the G.R. dated 13-7-1983 wherein it is stated that the land of impartible and new tenure can be regularised on payment of certain premium. However, the authority have not regularised the petitioner's land on the ground that prior to the order of Dy. Collector, the petitioner has not moved any application to the authority concerned for regularisation of his land of new and impartible tenure. Learned counsel for the petitioner also further drawn the attention of this Court to the GR dated 8-9-1986 wherein it is provided that the land of impartible and new tenure can be regularised on payment of certain amount of premium. He also submitted that as per the Govt. Resolution dated 14-3-1996/11-3-1996 the agricultural land sold for agriculture purpose can be regularised on

payment of 60 times of assessment price.

11. It appears that the petitioner is entitled to move the authority concerned for regularisation of his land. But the petitioner has not applied to the authority concerned for regularisation of his land at the relevant time.

12. In view of the above discussion and in the facts and circumstances of this case, the petitioner is entitled to move the authority concerned for regularisation of his lands in question as per the Government Resolutions & Circulars referred to hereinabove on payment of premium as required under the law and aforesaid GRs. and Circulars. Interim prayer was granted by this Court on the condition that petitioner will deposit in this Court within four weeks from the date of order an amount of Rs.18,000/- towards premium to be paid as per the Resolution of 1982 at the rate of 75% of the price. Accordingly, the petitioner has already deposited the aforesaid amount of Rs.18,000/before this Court and still the same is lying with the Court.

13. In the facts and circumstances of this Court, this petition is disposed keeping the the impugned orders in abeyance till the application of the petitioner for regularisation of lands is decided by the authority concerned. The petitioner is at liberty to move an application for regularisation of aforesaid lands before the Collector, Banaskantha within two months from today. In case the petition files such application before the District Collector, Banaskantha, the District Collector, Banaskantha is directed to decide the petitioner's application for regularisation of his aforesaid lands in accordance with law and in light of the aforesaid Government Resolutions and Circulars, within two months thereafter.

14. The petitioner is hereby permitted to withdraw the aforesaid amount of Rs.18,000/- deposited before this Court. If the application of the petitioner for regularisation of his lands is granted, in that event the District Collector, Banaskantha, shall decide the actual amount of premium to be paid by the petitioner for regularisation of his lands and the petitioner shall deposit the same. Till the application of the petitioner for regularisation of his lands is decided by the Collector concerned, the possession of the petitioner over the lands in question, shall not be disturbed in any manner whatsoever.

15. Rule is made absolute to the aforesaid extent, with no order as to costs.

-0-0-0-0-0-

/JVSatwara/